

Claimant contends that the Administrative Law Judge awarded preliminary benefits of medical treatment. Respondent contends that the claimant's current need for treatment is not the result of the work-related accident, but instead is the result of an intervening injury or claimant's subsequent work activities with another employer. Therefore, this can give rise to the jurisdictional issue of whether the claimant's current need for medical treatment is due to the accidental injury that arose out of and in the course of claimant's

employment with respondent.¹ Although this issue is considered jurisdictional and is subject to review by the Board on an appeal from a preliminary hearing order, before that issue can be reached the Board must first determine if Judge Foerschler's letter is an order.

Based upon the record presented, the Appeals Board finds that the October 12, 1999 letter is not an order. Judge Foerschler has not formally ruled that the condition for which claimant was seeking medical treatment at the September 2, 1999, preliminary hearing is the direct and natural result of her December 20, 1998 accident. The ALJ took under advisement the issues raised by respondent including whether the activities claimant has performed since her accident establish a separate and distinct injury. Therefore, the Appeals Board finds that there has not been a ruling by the ALJ on whether claimant has proven that the condition for which claimant seeks treatment arose out of and in the course of her employment with respondent. This issue must first be decided by an administrative law judge before the Board has jurisdiction to review and decide that issue.²

WHEREFORE, it is the finding, decision, and order of the Appeals Board that this matter should be remanded to Administrative Law Judge Robert H. Foerschler for his determination and order.

IT IS SO ORDERED.

Dated this ____ day of January, 2000.

BOARD MEMBER

c: James R. Shetlar, Overland Park, KS
D'Ambra M. Howard, Overland Park, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director

¹ K.S.A. 1998 Supp. 44-534a(2) and K.S.A. 1998 Supp. 44-551(b)(2)(A).

² K.S.A. 1998 Supp. 44-551(b)(1) and K.S.A. 1998 Supp. 44-555c(a).